

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAWN HAWK,

Plaintiff,

No. CIV S-04-0731 MCE CMK P

vs.

ALAMEIDA, et al.,

Defendants.

ORDER


_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

By order filed on June 23, 2006, the United States Marshal was directed to serve process on defendants in this action, including K. Howard. On September 18, 2006, the United States Marshal returned service unexecuted on K. Howard because said individual is deceased. In light of the suggestion of K. Howard's death upon the record, the Clerk of the Court will be directed to serve a copy of the USM-285 form returned by the Marshal on plaintiff together with a copy of this order. Service of said form will invoke the ninety day time limit for filing a motion for substitution pursuant to Federal Rule of Civil Procedure 25(a)(1). If plaintiff does not seek substitution within 90 days of the date of this order, the court will recommend dismissal of the action as to defendant Howard only. See Fed. R. Civ. P. 25(a)(1).

1 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall serve
2 on plaintiff forthwith a copy of the USM-285 form returned by the United States Marshal on
3 September 18, 2006 together with this order.

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5 DATED: September 25, 2006.

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8 **CRAIG M. KELLISON**
9 UNITED STATES MAGISTRATE JUDGE
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